NO. 98-0833

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

MID-PLAINS, INC.,

PETITIONER-RESPONDENT,

V.

PUBLIC SERVICE COMMISSION OF WISCONSIN,

RESPONDENT-APPELLANT,

KMC TELECOM, INC. AND TDS DATACOM, INC.,

INTERESTED PARTIES,

TDS METROCOM, INC.,

INTERVENOR.

FILED

June 7, 1999

CLERK OF
COURT Of APPEALS
OF WISCONSIN

ERRATA SHEET

Marilyn L. Graves
Clerk of Court of Appeals
P.O. Box 1688
Madison, WI 53701-1688

Court of Appeals District I
633 W. Wisconsin Ave., #1400
Milwaukee, WI 53203-1918

Court of Appeals District III
740 Third Street
Wausau, WI 54403-5784

Jennifer Krapf
Administrative Assistant
119 Martin Luther King Blvd.
Madison, WI 53703

Peg Carlson
Chief Staff Attorney
119 Martin Luther King Blvd.
Madison, WI 53703

Court of Appeals District II
2727 N. Grandview Blvd.
Waukesha, WI 53188-1672

Court of Appeals District IV
119 Martin Luther King Blvd.
Madison, WI 53703

Hon. Richard J. Callaway, Trial Court Judge
City-County Bldg.
210 Martin Luther King, Jr. Blvd.
Madison, WI 53709

Judith A. Coleman, Trial Court Clerk
Rm GR-10, City-County Bldg.
210 Martin Luther King, Jr. Blvd.
Madison, WI 53709

Michael P. Erhard
Reinhart, Boerner, Van Deuren, Norris & R, SC
P. O. Box 2020
Madison, WI 53701-2020

Peter L. Gardon
Reinhart, Boerner
P.O. Box 2020
Madison, WI 53701-2020

Daniel T. Hardy
P.O. Box 1767
Madison, WI 53701-1767

Michael S. Heffernan
Foley & Lardner
P.O. Box 1497
Madison, WI 53701-1497

Michael B. Van Sicklen
Foley & Lardner
P.O. Box 1497
Madison, WI 53701-1497

Michael S. Varda
Public Service Commission
P.O. Box 7854
Madison, WI 53707

David G. Walsh
Foley & Lardner
P.O. Box 1497
Madison, WI 53701-1497

Michael J. Modl
Axley Brynelson
P.O. Box 1767
Madison, WI 53701-1767

Wayne O. Hanewicz
Foley & Lardner
P.O. Box 1497
Madison, WI 53701

John T. Payette
Axley Brynelson
P.O. Box 1767
Madison, WI 53701-1767

Andrew W. Erlandson
Reinhart Boerner VanDeuren Norris & Rieselbac
P.O. Box 2020
Madison, WI 53701-2020

(L.C. #97-CV-2006)

PLEASE TAKE NOTICE that the attached pages 4-6 are to be substituted for pages 4-6 in the above-captioned opinion which was released on May 27, 1999.

entry into its service territory.[2] And that determination is final in that it was never appealed to the circuit court.[3]

We are also satisfied that, in light of the circuit court's remand, any consideration of whether Mid-Plains had a constitutionally-protected interest in either its certificate of authority or its federal exemption was premature and should not have been reached by that court. The constitutional issue would arise only if Mid-Plains had *not* consented to entry and waived its exemption, for one who has voluntarily consented to relinquish an interest can hardly be heard to claim that he or she has been unconstitutionally deprived of that interest. Indeed, the property-rights issue appears to persist in these proceedings primarily because of its relationship to Mid-Plains's other lawsuit against the individual Commissioners. It is a well-accepted rule that, "as a matter of judicial prudence, a court should not decide [a constitutional issue] unless it is essential to the determination of the case before it." ***Kollasch v. Adamany***, 104 Wis.2d 552, 561, 313 N.W.2d 47, 51 (1981). That such prudence should have been exercised in this case is apparent from the fact that, given the circuit court's remand order—and the unchallenged resolution of the remanded issues by the Commission—the only *raison d'être* for the parties' pursuit of a constitutional issue on this appeal is the other lawsuit.

With respect to this case, the circuit court's premature and unnecessary statements and rulings with respect to Mid-Plains's constitutional argument constitute *obiter dicta* without legal or precedential effect. *See* ***State v.***

---

[2] The Commission also ruled that Mid-Plains did not possess a property interest in either its certificate of authority or its federal exemption.

[3] Mid-Plains filed a petition for judicial review which was dismissed on March 17, 1999. However, Mid-Plains reached a settlement with TDS and KMC after the Commission's ruling and did not appeal the dismissal of its petition.

Sartin, 200 Wis.2d 47, 60 n.7, 546 N.W.2d 449, 455 (1996) ("[d]icta is a statement or language expressed in a court's opinion which extends beyond the facts in the case and is broader than necessary and not essential to the determination of the issues before it"). *See also*, ***Steinke v. Steinke***, 126 Wis.2d 372, 382, 376 N.W.2d 839, 844 (1985) (dicta has no precedential effect). Nor, we believe, can a *dictum* be in any way considered "the law of the case."[4]

The nature of Mid-Plains's interest in its certificate of authority, or in its federal exemption, is wholly immaterial if the company has voluntarily relinquished that interest. It follows that the circuit court's purported ruling on that subject is a nullity in light of its remand of the issue to the Commission, and the Commission's unchallenged determination that Mid-Plains had indeed consented to competitors' entry into its service area (and had waived the federal exemption) in the plan it filed with the Commission as part of its successful de-regulation application.

We therefore affirm the circuit court's order insofar as it remanded the case to the Commission for further hearings on the waiver/consent issue (indeed, the Commission does not challenge that ruling on this appeal). To the extent the court has ruled on the premature "property-interest" claim, however, we reverse. As we have held, that ruling is a nullity.

By the Court.—Orders affirmed in part and reversed in part.

---

[4] While we have found no Wisconsin case stating such a rule with particularity, it appears to be the rule in the great majority of states. *See*, for example: ***People v. Neely***, 82 Cal. Rptr.2d 886, 897 (Cal. App. 1999); ***Memphis Publ'g Co. v. Tennessee Petroleum Underground Storage Tank Bd.***, 975 S.W.2d 303, 305 (Tenn. 1998); ***Edgewater Beach Owners Ass'n, Inc. v. Board of County Comm'rs***, 694 So.2d 43, 45 (Fla. App. 1997); ***Koske v. Townsend Eng'g Co.***, 551 N.E.2d 437, 443 (Ind. 1990); ***Blanchard v. Kaiser Found. Heath Plan***, 901 P.2d 943, 946 (Ore. App. 1995); ***Huckabay v. Irving Hosp. Auth.***, 879 S.W.2d 64, 66 (Tex. App. 1993); ***DeBry v. Valley Mortgage Co.***, 835 P.2d 1000, 1003 (Utah 1992); ***Feller v. Scott County Civil Serv. Comm.***, 482 N.W.2d 154, 159 (Iowa 1992).

Not recommended for publication in the official reports.